

STATE OF MAINE

Board of Overseers of the Bar
Grievance Commission
File No. 86-132

BOARD OF OVERSEERS OF THE BAR)
)
 PETITIONER)
)
 VS.)
)
 E. STEPHEN MURRAY)
)
 RESPONDENT)
)
)

REPORT OF PROCEEDINGS
FINDINGS, CONCLUSIONS
AND DETERMINATION

On October 13, 1988, Panel C of the Grievance Commission conducted a hearing open to the public on the referenced matter at the hearing room of the Board of Overseers of the Bar, Whitten Road, Augusta. Members of the Panel included Joan Phillips Sandy, Esq., Chairperson, David B. Soule, Jr., Esq., and Marc V. Schnur. Respondent appeared in person and was represented by counsel, John N. Kelly, Esq. The Panel heard testimony from the Respondent and one other witness, Bruce M. Read, Esq. and received in evidence eleven Board exhibits and four respondent exhibits. Both the Petitioner and Respondent submitted Memoranda of Law. The hearing was recorded and reported.

FINDINGS OF FACT:

On the basis of the evidence presented, the Panel finds that at all times relative to these matters, Respondent, E. Stephen Murray, was an attorney duly admitted to and engaging in the practice of law in the State of Maine. Respondent at all times relevant

to these matters represented William Danton.

The evidence showed that Mr. Danton applied for and received approval from the Old Orchard Beach Planning Board and Zoning Board of Appeals to construct a 142 foot high condominium project on property owned by his mother in Old Orchard Beach. The Grand Beach Association and an officer of that Association, Oscar A. Pluznick, who owned property abutting the proposed condominium project, both represented by Bruce Read, Jr., appealed the decision of the Planning Board and Zoning Board of Appeals in Superior Court. The Superior Court found for the Plaintiff in reversing the height variance granted by the Zoning Board of Appeals. The evidence suggested that if that decision stood, the Defendant, Danton would realize a return of some \$1,120,000 less than if the decision were reversed on further appeal to the Law Court. In the course of the appeal in Superior Court, Murray, on behalf of Danton, argued that neither the Grand Beach Association nor Mr. Pluznick had legal standing to prosecute the appeal. In its March 7, 1986, decision, the Court found that Mr. Pluznick had standing and therefore it was unnecessary to decide if Grand Beach Association had standing.

In March, 1986, Mr. Danton went to Florida to meet with Mr. Pluznick in an effort to persuade him to withdraw his name as a plaintiff party in the suit. Mr. Danton, as defendant, was planning to appeal the Superior Court decision to the Law Court. Mr. Read believed that removing Mr. Pluznick as a named plaintiff would be potentially fatal to the suit because the question of standing of the Grand Beach Association had not been determined in Superior Court. Mr. Danton claimed in an affidavit dated July 24, 1986, that at that March meeting he and Mr. Pluznick had resolved their differ-

ences during his visit to Florida; that all matters had been settled between Mr. Pluznick and himself; that Mr. Pluznick did not wish to have anything further to do with the law suit; that he no longer cared if a 142 foot high condominium was to be built next door; that he wanted his name removed from the appeal; that he was not even aware that there was an appeal; that Mr. Read, counsel for Grand Beach Associates and Pluznick, did not represent him. Mr. Danton, as Respondent confirmed in his testimony, told this to Respondent and instructed Respondent to prepare a notice for Mr. Pluznick to sign so his name could be removed as a party in the pending appeal. Respondent then prepared a document to that effect entitled "NOTICE OF PLAINTIFF OSCAR PLUZNICK" and gave it to Mr. Danton. According to Mr. Danton's affidavit, Danton then returned to Florida and gave the document to Mr. Pluznick. Mr. Pluznick told Danton he wanted to obtain legal advice prior to signing the document. Mr. Danton returned to Maine.

On April 8, 1986 Respondent filed an appeal, on behalf of Danton, in the Law Court from the Superior Court decision of March 7, 1986.

Later in April, Mr. Danton returned to Florida and obtained the signed and notarized "NOTICE OF PLAINTIFF OSCAR PLUZNICK" which was dated 25 April 1986. According to his affidavit, Mr. Danton then gave Mr. Pluznick a release Danton, not Murray, had prepared stating neither Danton nor his mother would sue Mr. Pluznick about any matter concerning the condominium project. Mr. Danton thereupon returned to Maine and instructed Respondent to file the notice with the Court. Respondent filed the notice on April 29, 1986 and sent a

copy of the notice and cover letter to Plaintiffs' Counsel.

On May 2, 1986, Plaintiffs' Counsel, Bruce M. Read, prepared Appellees' Response to Notice Filed by Appellant Danton and filed that Response together with his affidavit confirming he was still Pluznick's counsel and protesting the filing of Respondent's Notice.

On May 3, 1986, Mr. Pluznick signed a "CORRECTIVE NOTICE OF OSCAR PLUZNICK" which disputes some material in Mr. Danton's Affidavit of July 24, 1986. Mr. Pluznick stated that the NOTICE OF PLAINTIFF OSCAR PLUZNICK was presented to him at a single meeting by Danton and a person identified only as Carmine; that it was signed without consultation with any attorneys; and was signed without the presence of a notary. Testimony was given by Bruce Read that Mr. Pluznick told him he was pressured by Mr. Danton and Carmine into signing the Notice. Because there was no testimony or any evidence that Respondent was even aware of any pressure on Mr. Pluznick, let alone was involved in anyway whatsoever in any pressure, the Panel disregarded the inconsistencies between the two affidavits and that part of Mr. Read's testimony. Mr. Read chose not to file with the Court the Pluznick affidavit dated May 3, 1986, until September of that year, the month after the demise of Mr. Pluznick.

The Law Court decided the case on October 23, 1986 and found that the Grand Beach Associates did have legal standing to sue and upheld the Superior Court decision reversing the variance granted by the Zoning Board of Appeals and affirming the conditional permit granted by the Planning Board.

CONCLUSIONS:

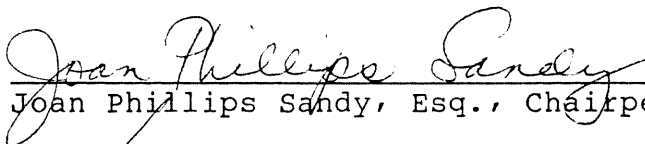
On the basis of this evidence and the facts as found, the Panel finds Respondent violated Bar Rule 3.1 (a) and Bar Rule 3.6.(j). Respondent claims that he did not believe that Mr. Pluznick was still represented by counsel after the Superior Court decision. Respondent's sole basis for that assumption is his conversation with Mr. Danton upon the latter's return from Florida after speaking with Mr. Pluznick. Respondent made no effort to ascertain whether Pluznick actually had dismissed his attorney. Given the particular facts of this case, Respondent erred in not determining whether Pluznick was represented by counsel. This failure constitutes conduct "unworthy of an attorney." Respondent argues that he did not communicate with Mr. Pluznick, nor did he cause Danton to communicate with Pluznick. But he did prepare a document at his client's request to obtain an adverse party's signature. Respondent intended thereby to, and indeed did, file that document with the Court without the consent of the adverse party's attorney. Failure to obtain consent of Mr. Pluznick's lawyer prior to communicating with Mr. Pluznick, constitutes a violation of Bar Rule 3.6 (j). Respondent argues that clients should be encouraged to settle cases among themselves without their attorneys present. The Panel is persuaded that the purpose of preparing the document, obtaining the signature, and filing the document with the Court was not to settle the case, but rather to give Danton an advantage which he would not otherwise have had if opposing counsel had been made aware of Danton's activity.

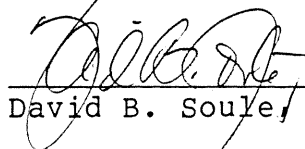
DETERMINATION:

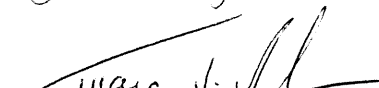
The Panel is persuaded that Respondent's negligence and misconduct is sufficient to warrant discipline. The Panel notes that Respondent in twenty years of practice has not previously been subjected to discipline. The Panel agrees with the American Bar Association Standards for Imposing Lawyer Discipline that "Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system and causes injury or potential injury to a party or interference or potential interference with the outcome of a legal proceeding". Therefore the Panel determines that the appropriate disposition of this case is that the Respondent be, and hereby is, reprimanded.

Bar Counsel is directed to transmit this decision to the Respondent and to report it to the Board of Overseers of the Bar in accordance with Maine Bar Rule 7 (e) 4.

Dated November 29 1988


Joan Phillips Sandy, Esq., Chairperson


David B. Soule, Jr., Esq.


Marc V. Schnur